APPEAL BRIEF UNDER 37 C.F.R. § 41.37

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appellant(s): Saar Wilf *et al.*	Examiner: James Nigh
Serial No.: 10/574,546	Group Art Unit: 3685
Filed: April 3, 2006	Docket No.: 2043.560US1
Customer No.: 49845	Confirmation No.: 4073

Title: METHODS AND SYSTEMS FOR DETERMINING THE RELIABILITY OF
           TRANSACTIONS

APPEAL BRIEF UNDER 37 CFR § 41.37

Mail Stop Appeal Brief- Patents
Commissioner for Patents
P.O. Box 1450
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The Appeal Brief is presented in support of the Notice of Appeal to the Board of Patent Appeals and Interferences, filed on October 13, 2010, from the Final Rejection of claims 1-3, 5-7 and 9-22 of the above-identified application, as set forth in the Office Action dated July 13, 2010.

The Commissioner of Patents and Trademarks is hereby authorized to charge Deposit Account No. 19-0743 in the amount of $540.00 which represents the requisite fee set forth in 37 C.F.R. § 41.20(b)(2). The Appellants respectfully request consideration and reversal of the Examiner's rejections of the pending claims.

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1. REAL PARTY IN INTEREST

The real party in interest of the above-captioned patent application is the assignee, PAYPAL ISRAEL LTD., as evidenced by the assignment recorded at Reel 021096, Frame 0379.

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2. RELATED APPEALS AND INTERFERENCES

There are no other appeals or interferences known to Appellants that will have a bearing on the Board's decision in the present appeal.

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3. STATUS OF THE CLAIMS

The present application was filed in the U.S. Patent Office on April 3, 2006. In response to a Non-Final Office Action dated April 1, 2009, Appellants amended claims 1-3, 5-7, 9, 11, 13, 15-16, and 22 and canceled claims 4 and 8. In response to a Final Office Action dated October 2, 2009, Appellants amended claims 1 and 16. In response to a Non-Final Office Action dated February 2, 2010, Appellants amended claims 16 and 21. Claims 1-3, 5-7, and 9-22 stand twice rejected, remain pending, and are the subject of the present Appeal.

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4. STATUS OF AMENDMENTS

No amendments have been made subsequent to the Final Office Action dated July 13, 2010.

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5. SUMMARY OF CLAIMED SUBJECT MATTER

This summary is presented in compliance with the requirements of Title 37 C.F.R. §41.37(c)(I)(v), mandating a "concise explanation of the subject matter defined in each of the independent claims involved in the appeal." Nothing contained in this summary is intended to change the specific language of the claims described, nor is the language of this summary to be construed to limit the scope of the claims in any way.

Specific page and line numbers are merely exemplary and are given below merely as an aid in understanding various inventive subject matters presented. The page and line numbers relate to Appellants' Application as-filed. Aspects of the present inventive subject matter include, but are not limited to, methods and systems for determining the reliability of transactions.

INDEPENDENT CLAIM 1

1.   A method of determining a reliability of a transaction *(Title, page 1, lines 1-2)* involving an account identifier identifying a chargeable account *(page 3, lines 11-13)*, the method comprising:

    a)   receiving the account identifier *(page 3, lines 11-14; page 8, line 9)* at a data receiving unit of a verification system *(page 8, line 8; Figure 2, reference 202; Figure 4, references 104, 30)*;

    b)   determining, using one or more processors, a reliability indicator of at least one stored personal detail associated with the chargeable account *(page 3, lines 14-16; page 8, lines 18-19; Figure 2, reference 208)*, the at least one stored personal detail usable to verify at least one candidate personal detail *(page 3, line 32 to page 4, line 2)*, the reliability indicator determined based on at least one of a time the at least one stored personal detail was received and associated with the account identifier *(page 4, lines 3-4, 7-10; page 7, lines 7-14)*, a record of an identification procedure performed upon receipt of the at least one stored personal detail *(page 4, lines 3-5, 21-26 ; page 6, lines 24-31)*, or a record of a degree of personal exposure of an entity submitting the at least one stored personal detail

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(page 4, lines 3, 5-6, 11-14; page 6, line 32 to page 7, line 6), the at least one stored personal detail retrieved from an account database *(Figure 4, reference 38)*; and

c) from the verification system *(Figure 4, reference 104)*, providing the reliability indicator to a user *(page 3, line 14-15; page 8, lines 19-20; Figure 2, reference 210)*.

INDEPENDENT CLAIM 16

16.   A verification system for determining a reliability of a transaction involving an account identifier identifying a chargeable account *(page 5, lines 8-10; Figure 1, reference 104)*, the system comprising:

      a)   a data receiving unit configured to receive an account identifier or at least one candidate personal detail *(page 5, lines 10-12; page 11, lines 22-23; Figure 4, reference 30)*;

      b)   a computer-readable storage medium having instructions stored thereon, the instructions executable by a processor for implementing a reliability indicator provider *(page 5, lines 12-15; Figure 4, element 40)* to determine at least one reliability indicator of at least one stored personal detail associated with the chargeable account *(page 3, lines 14-16; page 8, lines 18-19; page 11, lines 29-31; Figure 2, reference 208)*, the at least one stored personal detail usable to verify at least one candidate personal detail *(page 3, line 32 to page 4, lines 1-2)*, the reliability indicator determined based on at least one of a time the at least one stored personal detail was received and associated with the account identifier *(page 4, lines 3-4, 7-10; page 7, lines 7-14)*, a record of an identification procedure performed upon receipt of the at least one stored personal detail *(page 4, lines 3-5, 21-26 ; page 6, lines 24-31)*, or a record of a degree of personal exposure of an entity submitting the at least one stored personal detail *(page 4, lines 3, 5-6, 11-14; page 6, line 32 to page 7, line 6)*.

This summary does not provide an exhaustive or exclusive view of the present subject matter, and Appellants refer to each of the appended claims and its legal equivalents for a complete statement of the invention.

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6. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

1. Claims 1-3, 5-7, 9 and 11-22 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent No. 6,714,918 to Hillmer *et al.* (*Hillmer*).

2. Claim 10 was rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over *Hillmer* in view of U.S. Patent 6,070,141 to Houvener *et al.* (*Houvener*).

7. ARGUMENT

A) The Applicable Law under 35 U.S.C. §103(a)

Although other rationales for rejection under 35 U.S.C. §103(a) may exist, the basis for an obviousness rejection is still grounded in a consideration of all claim elements. *"All words in a claim must be considered* in judging the patentability of that claim against the prior art." *In re Wilson*, 424 F.2d 1382, 1385 (CCPA 1970) (emphasis added). *See also* MPEP § 2143.03. Additionally, to render the claimed subject matter obvious, the prior art references must teach or suggest every feature of the claims. *See* Manual of Patent Examining Procedure §§ 706.02(j), 2143(A) (2008); MPEP § 2142 (2006) (citing *In re Vaeck*, 947 F.2d, 488 (Fed. Cir. 1991). Cited approvingly in *Ex parte* WEN WEN and PATRICIA NG at 7; Appeal No. 2009-000776; decided September 25, 2009. Appellants further note that although the Examiner may interpret claims during examination as broadly as their terms reasonably allow, the *Hyatt* court stated that "during examination proceedings, claims are given their broadest reasonable interpretation *consistent with the specification.*" *In re Hyatt*, 211 F.3d 1367, 1372 (Fed. Cir. 2000) (citing *In re Graves*, 69 F.3d 1147, 1152 (Fed. Cir. 1995) (emphasis added). Further, "The protocol of giving claims their *broadest reasonable interpretation* during examination does not include giving claims a *legally incorrect interpretation.* This protocol is solely an examination expedient, not a rule of claim construction." *In re Skvorecz*, 92 U.S.P.Q.2d 1020 (Fed. Cir. 2009), emphasis added.

B) Discussion of the rejection of claim 1 under 35 U.S.C. § 103(a) as being unpatentable over Hillmer.

In the Final Office Action dated July 13, 2010 (*Final Action*), the Examiner incorrectly asserted that:

> the data used in the matching process cannot be used to distinguish the claimed invention from the prior art as this is simply non-functional descriptive material as the same results would be achieved with *Hillmer.* . . . Applicant's disclosure at the very least

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indicates that verifying and matching are synonymous (page 8, "this comparison between candidate and stored personal details is carried out by seeking a literal match", page 12, "Optional Comparison Module 34 compares candidate and stored personal details to determine whether they match, as described above") therefore to equate verifying and matching is by the specification. *Final Action*, at 2-3.

Appellants challenge at least the assertion that "the only recitation that is enabled recites that the determination is performed by matching the stored personal detail to the candidate personal detail." *Final Action*, at 3.

First, claim 1 does not include "matching the stored personal detail to the candidate personal detail." With respect to the "candidate personal detail" of claim 1, claim 1 recites "the at least one stored personal detail *usable to verify* at least one candidate personal detail" (emphasis added). As such, in the method of claim 1, the stored personal detail is *not* matched to the candidate personal detail, but used to verify the candidate personal detail. Further, because claim 1 is not directed to matching a stored personal detail to a candidate personal detail, the alleged support identified by the Examiner is irrelevant to the examination of the claims.

Further, the same results are not achieved by *Hillmer* and claim 1, so the data used in the matching process is *not* "simply nonfunctional descriptive material." In *Hillmer*, the system *detects fraudulent transactions*. *Hillmer*, Abstract. More specifically, a "score is computed as a function of the authentication of the remaining parameters of the *transaction*" and is used to "determine the likelihood of a transaction being fraudulent." *Hillmer*, Abstract (emphasis added). The transaction parameters of *Hillmer* are associated with a number of "points" as shown in Table 1.0 (reproduced below):

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TABLE 1.0

TRANSACTION PARAMETER	POINTS
Positive Database match	−5.00
Negative Database (this vendor) match	+10.00
Negative Database (other vendor) match	+8.50
Not shipping to card holder address	+0.50
Shipping to card holder address	−1.00
Not shipping to customer address	+0.50
Shipping to customer address	−1.00
Shipping to Freight forwarder	+1.00

TABLE 1.0-continued

TRANSACTION PARAMETER	POINTS
Third party address verification (AVS) ok	−1.00
Third party address verification (AVS) partial ok	+2.50
Third party address verification (AVS) not ok	+5.00
Customer Svc. Rep. Suspects fraud	+5.00
High risk zip code	+1.50
Telephone order	+0.25
Total transaction amount	+0.50/$100
Air shipment	+0.50
Customer duration	−0.05/year
Customer status = excellent	−1.00
Customer status = good	−0.25
Customer status = fair	+0.25
Customer status = poor	+1.00
Credit card amount velocity exceeded	+0.50
Credit card count velocity exceeded	+0.50
Customer amount velocity exceeded	+0.25
Customer count velocity exceeded	+0.25
Ship-to-address amount velocity exceeded	+0.50
Ship-to-address count velocity exceeded	+0.50
Card Verification Value (CVV2) mismatch	+0.50
Card Verification Value (CVV2) match	−1.00

The transaction parameters of *Hillmer* quantify various aspects of the transaction itself and not the reliability of a stored personal detail. For example, whether the customer requests shipping to his own address versus to another address affects whether the transaction will ultimately be

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considered fraudulent. In contrast, the "reliability indicator of . . . [a] stored personal detail" of claim 1 is

> based on . . . *a time* the at least one stored personal detail was received . . . , a record of *an identification procedure performed* upon receipt of the at least one stored personal detail, or a record of *a degree of personal exposure* of an entity submitting the at least one stored personal detail . . . (emphasis added).

The transaction parameters of *Hillmer* do not act as a reliability indicator of the "customer address" actually received from the customer that is submitted in the transaction but merely check that the shipping address matches the customer address and assign a point value based on the matching.

Moreover, Appellants note that while the Application states that "Fig. 3 provides illustration of embodiments wherein candidate personal details are received and wherein the received candidate personal details are compared to stored personal details (step 210)" (page 8, lines 21-23), Appellants submit that Figure 3, as described above, provides embodiments of a portion (step 210) of the method of Figure 2 that is not recited in claim 1. The Application also states that:

> Although shown this way in Fig. 3, it is not a requirement of the present invention that the candidate personal identifiers be compared with the stored personal identifiers (step 206) before the at least one reliability indicator are retrieved (step 208). Thus, in other embodiments, the at least one reliability indicator are retrieved (step 208) before the actual comparison step 206. Application, at page 9, lines 13-17.

As such, Appellants reiterate that, while "comparing" is disclosed in the Application, in the method of claim 1, the stored personal detail is *not* matched to the candidate personal detail, but used to verify the candidate personal detail. Further, because claim 1 is not directed to matching a stored personal detail to a candidate personal detail, the alleged support identified by the Examiner is irrelevant to the examination of the claims.

In the *Final Action*, the Examiner further states that:

> the term "reliability indicator" is extremely broad; moreover as defined in the claim, "reliability indicator" only requires the ability

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to either know the time that the detail regarding an account was received, retrieving a record regarding an identification procedure (broadly interpreted), or retrieving a record that (broadly interpreted) involves personal exposure. Again as Hillmer discloses elements that meet the broadest reasonable interpretation of all three of these claimed limitations Hillmer satisfies the invention as claimed. *Final Action*, at 3-4.

However, the Examiner, in formulating a broadest reasonable interpretation, is giving claim 1 a legally incorrect interpretation. In support of the assertion that *Hillmer* teaches or suggests the "reliability indicator" of claim 1, the Examiner refers to the following paragraph of *Hillmer*:

> The consumer information provider 224 first computes *a fraud multiplier for the transaction* 100 (Block 306). The fraud multiplier is a score *based on the value of the transaction parameters* 116 *and whether the transaction parameters authenticate against databases* 308, 310, 312 of known information. These databases 308, 310, 312 include a customer information database 308, a negative account database 310 and a negative address database 312. Generally, these databases 308, 310, 312 contain specific customer and consumer information, statistical data and historical transaction data known to the participating vendors 106, 316, 318. *Hillmer*, Col. 7, lines 42-53 (emphasis added).

Final Action, page 4. As such, the fraud multiplier of *Hillmer* is based on the transaction parameters (reproduced above). Because the transaction parameters are not

> determined based on at least one of a time the at least one stored personal detail was received and associated with the account identifier, a record of an identification procedure performed upon receipt of the at least one stored personal detail, or a record of a degree of personal exposure of an entity submitting the at least one stored personal detail,

as recited in claim 1, the "fraud multiplier" of *Hillmer* does not teach or suggest the "reliability indicator" of claim 1. As such, Appellants assert that claim 1 is in condition for allowance and request the Board to reconsider and withdraw the rejection under 35 U.S.C. §103 with respect to claim 1.

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Further, independent claim 16 has limitations similar to claim 1 and is asserted to also be allowable for at least the same reasons as those provided with respect to claim 1. Claims 2, 3, 5-7, 9, 11-15, and 17-22 depend either directly or indirectly from claim 1 or 16 and are allowable for at least the same reasons as their respective base claim. Further, these dependent claims may each be patentable for its own limitations.

B) Discussion of the rejection of claim 10 under 35 U.S.C. § 103(a) as being unpatentable over Hillmer *in view of* Houvener.

Claim 10 was rejected under 35 U.S.C. § 103(a) as being allegedly obvious over *Hillmer* in view of *Houvener*. However, *Houvener* fails to make up for any of the deficiencies not found *Hillmer*. Therefore, since claim 10 depends from claim 1, it too is allowable for at least the same reasons as claim 1. Further, claim 10 may be patentable for its limitations.

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SUMMARY

For the reasons argued above, claims 1, 3, 5-7, 9, and 11-22 were not properly rejected under § 103(a) as being unpatentable over *Hillmer*. Furthermore, claim 10 was not properly rejected under § 103(a) as being unpatentable over *Hillmer* in view of *Houvener*.
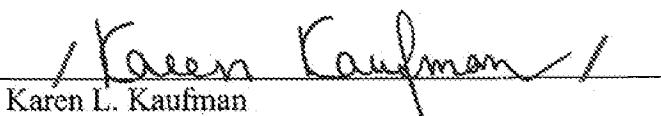
It is respectfully submitted that the art cited do not render the claims unpatentable and thus the claims are patentable over the cited art. Reversal of the rejection and allowance of the pending claims are respectfully requested.

Respectfully submitted,

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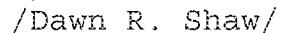
Dawn R. Shaw   /Dawn R. Shaw/
Name   Signature

8. CLAIMS APPENDIX

1.   A method of determining a reliability of a transaction involving an account identifier identifying a chargeable account, the method comprising:

    a)   receiving the account identifier at a data receiving unit of a verification system;

    b)   determining, using one or more processors, a reliability indicator of at least one stored personal detail associated with the chargeable account, the at least one stored personal detail usable to verify at least one candidate personal detail, the reliability indicator determined based on at least one of a time the at least one stored personal detail was received and associated with the account identifier, a record of an identification procedure performed upon receipt of the at least one stored personal detail, or a record of a degree of personal exposure of an entity submitting the at least one stored personal detail, the at least one stored personal detail retrieved from an account database; and

    c)   from the verification system, providing the reliability indicator to a user.

2.   The method of claim 1 further comprising:

    d)   providing at least one said stored personal detail.

3.   The method of claim 1 further comprising:

    d)   comparing the at least one candidate personal detail to at least one said stored personal detail.

5.   The method of claim 1, wherein if the time the at least one stored personal detail was received occurred less than a predetermined period before the transaction, the reliability of the at least one stored personal detail is decreased

6.   The method of claim 1, wherein if the degree of personal exposure of an entity is a physical presence of a person, the reliability of the at least one stored personal detail is increased.

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7.   The method of claim 6 wherein if the degree of personal exposure of an entity is a submission of at least one said stored personal detail using the Internet, the reliability of the at least one stored personal data is decreased.

9.   The method of claim 1 wherein at least one said reliability indicator is based on said identification procedure and a presentation of a verifying item upon submission of at least one said stored personal detail

10.   The method of claim 9 wherein said verifying item is selected from the group consisting of government issued identification, a hand signature and biometric information.

11.   The method of claim 1 further comprising
        d)   carrying out fraud prevention measures based upon provided said at least one determined reliability indicator.

12.   The method of claim 11 wherein said fraud preventing measures are selected from the group consisting of making a phone call to a verified phone number, sending an email to a verified email address, and physically sending an item to a verified street address.

13.   The method of claim 1 further comprising:
        d)   authorizing or denying a transaction based upon provided said at least one determined reliability indicator.

14.   The method of claim 1 wherein said at least one stored personal detail is selected from the group consisting of account owner's name, a street address, a billing address, an additional address, a phone number, an email address, a government-issued identifier, a mother's maiden name, a social security number.

15.   The method of claim 1 further comprising:

    d)   combining a plurality of said reliability indicators to obtain at least one combined reliability indicator.

16.   A verification system for determining a reliability of a transaction involving an account identifier identifying a chargeable account, the system comprising:

    a)   a data receiving unit configured to receive an account identifier or at least one candidate personal detail;

    b)   a computer-readable storage medium having instructions stored thereon, the instructions executable by a processor for implementing a reliability indicator provider to determine at least one reliability indicator of at least one stored personal detail associated with the chargeable account, the at least one stored personal detail usable to verify at least one candidate personal detail, the reliability indicator determined based on at least one of a time the at least one stored personal detail was received and associated with the account identifier, a record of an identification procedure performed upon receipt of the at least one stored personal detail, or a record of a degree of personal exposure of an entity submitting the at least one stored personal detail.

17.   The system of claim 16 further comprising

    c)   a data output unit configured to output data selected from the group consisting of said at least one reliability indicator and at least one said stored personal details.

18.   The system of claim 16 further comprising:

    c)   a chargeable account database for storing data selected from the group consisting of at least one said stored personal detail, at least one candidate personal detail, at least one said account identifier, and at least one said reliability indicator.

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19.   The system of claim 16 wherein said reliability indicator provider includes a combining module for combining a plurality of said reliability indicators to produce a combined reliability indicator.

20.   The system of claim 16 further comprising:

c)   a comparison module, for comparing at least one said candidate personal detail with at least one said stored personal detail.

21.   The system of claim 17 further comprising:

d)   a comparison module, for comparing at least one said candidate personal detail with at least one said stored personal detail,

wherein said data output unit is further configured to send results of said comparison.

22.   The method of claim 11 further comprising:

d)   authorizing or denying a transaction based upon provided said at least one determined reliability indicator.

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9. EVIDENCE APPENDIX

None.

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10. RELATED PROCEEDINGS APPENDIX

None.